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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL J. SMITH,

Defendant and Appellant.

C086545

(Super. Ct. No. 16FE024206)

Appointed counsel for defendant Michael J. Smith asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We have found no arguable error that would result in a disposition more favorable to defendant. Our review does, however, reveal a mandatory fee was not imposed. We will modify the judgment to impose the fee and otherwise affirm the judgment.

BACKGROUND

On April 9, 2016, defendant was in custody at California State Prison Sacramento in Folsom. On that date, correctional officer Petyo Rashev was working as a building officer when he saw defendant violently kicking another inmate, who was on the ground in the fetal position, in the upper torso and face. Officer Rashev yelled at defendant by voice and then on the loud speaker to “get down.” Defendant remained on his feet kicking the other inmate. Officer Rashev used pepper spray to gain defendant’s compliance.

The People charged defendant with assault by means of force likely to produce great bodily injury while confined in a state prison (Pen. Code, § 4501, subd. (b))¹ and alleged that he had sustained three prior convictions (§§ 667, subds. (b)-(i), 1170.12).

A jury found defendant guilty of the assault and in bifurcated proceedings, the trial court found all three prior convictions true.

The trial court sentenced defendant to the upper term of six years, doubled pursuant to the prior convictions, and resentenced defendant in a separate case for a total term of 13 years. The court also imposed a \$300 restitution fine (§ 1202.4, subd. (b)), imposed and stayed an identical parole revocation fine (§ 1202.45), and imposed a \$30 court facilities assessment (Gov. Code, § 70373).

DISCUSSION

Counsel filed an opening brief setting forth the facts of the case and requests that we review the record and determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

¹ Undesignated statutory references are to the Penal Code.

Having examined the record, we find no arguable error that would result in a disposition more favorable to defendant. One error, however, requires correction. The court did not impose a \$40 court operations assessment. (§ 1465.8.) That fee is mandatory; we therefore modify the judgment to impose it. (See § 1465.8; see also *People v. Alford* (2007) 42 Cal.4th 749, 754 [§ 1465.8 court operations assessment is mandatory for all convictions].)

DISPOSITION

The judgment is modified to impose a \$40 court operations assessment (§ 1465.8). As modified, the judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Hull, Acting P. J.

/s/
Butz, J.